

**United States Department of Labor
Employees' Compensation Appeals Board**

D.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Douglasville, GA, Employer**

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**Docket No. 16-1823
Issued: March 3, 2017**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 15, 2016 appellant filed a timely appeal from a May 9, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision dated October 29, 2015, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of appellant's claim.

ISSUE

The issue is whether OWCP properly denied appellant's request for review of the written record as untimely filed under 5 U.S.C. § 8124 (b).

FACTUAL HISTORY

On September 12, 2015 appellant, then a 47-year-old rural carrier, filed a traumatic injury claim (Form CA-1). She claimed that on September 11, 2015, she had sustained an injury to her lower back when a tree branch shattered the windshield of her vehicle. Appellant stopped work on September 12, 2015.

¹ 5 U.S.C. § 8101 *et seq.*

By decision dated October 29, 2015, OWCP denied appellant's claim, finding that she had failed to submit sufficient evidence to establish a causal relationship between her claimed condition and the employment incident of September 11, 2015.

By letter dated December 6, 2015, received by OWCP on December 14, 2015, appellant requested a review of the written record before a representative of the Branch of Hearings and Review. The request was postmarked December 10, 2015. With her request, appellant included several reports and notes from physicians regarding her ability to work and work restrictions.

By decision dated May 9, 2016, a hearing representative denied appellant's request for a review of the written record as it was untimely filed. OWCP's hearing representative noted that OWCP had issued its decision on October 29, 2015, while appellant's hearing request was postmarked December 10, 2015. Consequently, the hearing representative found that appellant was not entitled to a review of the written record as a matter of right, as the request was submitted more than 30 days after OWCP's decision. The hearing representative also considered whether to grant appellant a discretionary hearing, but determined that the issue in appellant's case could equally well be addressed by her requesting reconsideration before OWCP.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA provides: "Before review under section 8128(a) of this title [relating to reconsideration], a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."²

Section 10.615 of Title 20 of the Code of Federal Regulations provides that a hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: an oral hearing or a review of the written record.³ The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.⁴ OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.⁵ In such a case, it will determine whether to grant a discretionary hearing or review of the written record and, if not, will so advise the claimant with reasons.⁶

ANALYSIS

The Board finds that appellant's December 6, 2015 request for a review of the written record was postmarked as having been sent on December 10, 2015. OWCP issued its last merit

² 5 U.S.C. § 8124(b)(1).

³ 20 C.F.R. § 10.615.

⁴ *Id.* at § 10.616.

⁵ *See G.W.*, Docket No. 10-782 (issued April 23, 2010). *See also Herbert C. Holley*, 33 ECAB 140 (1981).

⁶ *Id.* *See also Rudolph Bermann*, 26 ECAB 354 (1975).

decision on October 29, 2015. The regulations provide that “[t]he hearing request must be sent within 30 days ... of the date of the decision for which a hearing is sought.”⁷ Appellant’s request was postmarked December 10, 2015 and therefore it was untimely. Thus, she was not entitled to a review of the written record as a matter of right.

The Branch of Hearings and Review’s hearing representative also denied appellant’s request because it found that the issue of causal relationship in her claim could be equally well-addressed by requesting reconsideration before OWCP. The Board finds that the hearing representative properly exercised his discretionary authority in denying appellant’s request for a hearing.⁸

CONCLUSION

The Board finds that OWCP properly denied appellant’s request for review of the written record as untimely filed under 5 U.S.C. § 8124(b).

⁷ 20 C.F.R. § 10.616(a).

⁸ *Mary B. Moss*, 40 ECAB 640, 647 (1989). Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts. *See André Thyratron*, 54 ECAB 257, 261 (2002).

ORDER

IT IS HEREBY ORDERED THAT the May 9, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 3, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board